

# 2001 Report on the State Bar of California Discipline System



March 2002

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## INTRODUCTION

The California State Bar (State Bar) has been in existence since 1927 as a public corporation and as the administrative arm of the California Supreme Court in matters involving the admission, regulation and discipline of attorneys.

The State Bar is an integrated Bar: all lawyers practicing in California must be active members. As of December 1, 2001, the number of active attorneys in California is 137,326, making the State Bar of California the largest state bar in the nation.

One of the most important functions of the State Bar is to protect the public, courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. As the following pages address in more detail, the units of the State Bar that contribute to the important function of discipline or, more broadly, public protection are:

**The Office of the Chief Trial Counsel (OCTC):** OCTC is responsible for the receipt, investigation, and prosecution of complaints against California attorneys.

**The State Bar Court (SBC):** SBC serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys.

**The Client Security Fund (CSF):** CSF reimburses victims for losses due to attorney theft or acts equivalent to theft.

**Mandatory Fee Arbitration:** the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients.

**Professional Competence:** The Professional Competence program assists the State Bar's ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers through a broad array of activities, such as recommending new and amended ethics rules and providing services to assist attorneys impaired by stress or substance abuse.

**Certification:** The Office of Certification develops standards for certification programs and administers such programs.

**Education:** The State Bar's numerous educational activities are scattered throughout a number of offices. The Bar is one of the biggest MCLE providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

**General Fund and Membership Fees:** Most of the 2001 annual membership fee of \$395 supports the State Bar's General Fund. The fund expended \$33,178,000 in 2001; \$26,307,000 was spent on discipline (OCTC, SBC, Fee Arbitration, Professional Competence).

## OFFICE OF THE CHIEF TRIAL COUNSEL<sup>1</sup>

The State Bar Board of Governors, through its Board Committee on Regulation and Discipline<sup>2</sup>, has oversight responsibility over the State Bar's disciplinary activities. The Chief Trial Counsel, who reports directly to this Board Committee pursuant to statute, is responsible for the overall structure, goals and management of OCTC. The various disciplinary units within the Office (Intake, Investigations and Trials) screen, review, analyze, investigate and prosecute allegations of attorney misconduct.

### Intake

The Intake Unit receives and analyzes allegations of attorney misconduct. The unit also monitors reportable actions, criminal convictions and attorneys on probation.

#### *Receipt of Inquiries*

The Intake Unit is generally the initial contact point through which a member of the public can initiate a complaint against an attorney. The vast majority of these initial contacts are made through the office's toll-free 1-800 telephone line (1-800-843-9053). During the year 2001, 110,120 calls were received at this number.

OCTC has developed an extensive voice tree of information through which callers to the 1-800 line can receive information on a variety of topics. Callers hear pre-recorded messages and receive answers to the most frequently asked questions. Callers can also order complaint forms without speaking directly to staff, freeing staff to receive and handle callers with more complex issues.

The State Bar's web site, <http://www.calbar.org> (to be changed to <http://www.calbar.ca.gov> when the State Bar launches its redesigned website in the Spring of 2002), contains extensive information on the attorney discipline system in California and provides the attorney complaint form digitally for those who wish to download it.

Attorneys in the Intake Unit conduct initial evaluations of all matters entering the discipline system to determine if a violation of the State Bar Act or California Rules of Professional Conduct is alleged.

Even if a violation is alleged, OCTC recognizes that many matters entering the system do not rise to a level warranting formal discipline. As a result, an important function of the Intake Unit is to identify cases for non-disciplinary disposition. This early

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<sup>1</sup> Note: In January of 2002, OCTC underwent a restructuring to become a more verticalized organization. The Intake Unit remained the same but the Investigations Unit became more integrated with Trials. Attorneys, investigators, and paralegals work together to perform a combined enforcement function. The Specialty Prosecutions Unit is no longer in place. There is a new "Fast Track" Unit assigned the responsibility of identifying those respondents who constitute the most serious and immediate threat of harm to the public and focusing dedicated staff resources for a swift investigation and prosecution against them. This report will not reflect those changes, as they were not in place in 2001.

<sup>2</sup> Renamed "Regulations, Admissions and Discipline Oversight Committee" effective January 2002.

identification allows low priority matters to be given a prompt resolution, clears them out of the discipline system with a minimal use of investigative or prosecutorial resources, and allows the overall resources of the Office to focus on the most egregious cases.

In assessing the priority of cases, attorneys in the Intake Unit consider a number of factors such as: the member's prior disciplinary history, the existence of other open inquiries/complaints against the member, the seriousness of the alleged misconduct, the degree of client harm as a result of the alleged misconduct, the member's cooperation in evaluating the complaint, and the likelihood of further harm to the public if the alleged misconduct goes unchecked. If an inquiry does allege a violation, and if it is a priority case, Intake forwards the inquiry to the Investigations Unit (where it becomes a "complaint").

The following table gives basic data from the Intake Unit for 1998-2001.

<b>Complaint Intake</b>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Total communications	49,662*	91,000**	109,259	110,120
Inquiries	8,040	8,405	10,846	11,138
Inquiries/reportable actions advanced to complaint status	1,876	2,055	4,033	3,929
Average pendency of days for resolved inquiries	N/A	N/A	32	33
Average pendency of days for open inquiries	N/A	N/A	62	64
* Represents data for January to June 1998.				
**Average for year. Complete call records were not available through all of 1999.				

OCTC regularly captures and categorizes the complainants' initial allegations of misconduct into eight areas. As the following chart indicates, approximately 50 percent of the allegations concern Performance (e.g., failure to perform, delay, abandonment, or a lack/failure to communicate) and Duties to Clients (e.g., failure to turn over files or documents, or a withdrawal from employment).

<b>Complaint Allegations</b>				
	<b>1998*</b>	<b>1999**</b>	<b>2000</b>	<b>2001</b>
Performance	2,345	6,251	3,407	3,178
Duties to clients	908	3,084	1,464	1,564
Handling of funds	763	2,781	1,205	1,155
Personal behavior	557	1,845	996	1,062
Interference with justice	369	1,421	995	962
Fees	541	1,690	918	940
Duties to State Bar	242	1,185	575	438
Professional employment	57	202	108	85
<b>TOTAL</b>	<b>5,782</b>	<b>18,459</b>	<b>9,667</b>	<b>9,384</b>
*Represents data for January to June 1998.				
** Represents data for July 1998 to December 1999.				

Possible resolutions for inquiries include forwarding the inquiry to another unit in OCTC, closing the inquiry completely, and referring the complaining witness to another agency. The following table indicates the specific resolution of inquiries for 1998-2001.

<b>Inquiry Resolution</b>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Alternative Dispute Resolution	0	0	0	0
Certified court reporter	0	45	2	2
Closed with communication letter	71	111	84	62
Coding Errors	0	5	0	0
Complaining witness' failure to cooperate	40	262	310	384
Criminal conviction complaint	0	444	316	633
Death of complaining witness	0	0	1	1
Death of respondent	13	19	27	14
Debt Letter: witness fees, court reporter	3	0	44	11
Decline	0	0	4	5
Directional letter	113	1	0	1
Disbarment in separate matter	15	31	47	22
Duplicate complaint	40	135	116	100
Error	11	33	54	76
Expert witness	0	48	11	1
Family Support referral	4	9	3	2
Fee arbitration award referral	3	14	8	7
Fee Arbitration matter	235	548	585	532
Incivility program	2	0	0	0
Inquiry advanced to investigation (not reportable actions)	1608	1639	2889	3089
Insufficient evidence	2027	2917	3354	3768
Insufficient patient/client information received	98	310	143	163
Lack of jurisdiction	167	96	119	126
Lozada decision	0	5	6	5
Matter being monitored as a criminal conviction	2	12	5	3
Matter resolved between complaining witness and R	259	378	210	207
Monitored as a reportable action	11	0	2	0
No communication by respondent	0	5	0	0
No complaint articulated	113	125	77	104
No merit	352	337	596	369
Not Sufficient proof	666	653	1280	1305
Pending investigation	0	0	0	0
Pre petition for reinstatement	0	5	13	22
Purged, complaint form not returned	98	1	0	0
Referred	1	29	17	21
Releases/Satisfaction of Judgment	0	12	2	1
Resigned charges pending	103	98	157	230
Resource Letter	--	388	310	205
Return of file letters sent	199	382	467	494
Rule of limitation closure	42	49	39	65
Substance abuse program	0	18	38	0
Termination	0	0	0	0
Third-party service provider	0	30	6	20
Unable to locate complaining witness	8	39	61	5
<b>TOTAL</b>	<b>6,422</b>	<b>9,245</b>	<b>11,402</b>	<b>14,056</b>

### Reportable Actions

The courts, attorneys, financial institutions and insurance companies have a duty to report certain specific information to the State Bar. In particular, (1) attorneys are charged with reporting, among other things, lawsuits filed against them, criminal convictions, and professional misconduct in another jurisdiction; (2) financial institutions report insufficient funds activity involving an attorney client trust account; (3) insurance companies report malpractice claims and filings and awards; and (4) courts report judicial sanctions over \$1,000, except for failure to make discovery.

<b>Reportable Actions Reported by Banks, Courts, Insurers and Attorney Self Reports</b>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Banks	4,260	4,417	3,595	2,853
Courts	104	149	152	108
Insurers	349	900*	307	398
Attorneys-self reports	81	97	121	120
<b>TOTAL</b>	<b>4,713</b>	<b>5,563</b>	<b>4,175</b>	<b>3,479</b>
*Estimated				

### Conviction Monitoring

In the event that a member is charged with a felony or misdemeanor, the prosecuting agency or the clerk of the court will generally advise the State Bar. OCTC monitors the criminal matter to final disposition, and if a conviction occurs, OCTC evaluates for forwarding to the State Bar Court as appropriate. If the crime involves moral turpitude, or is a felony, the State Bar Court may issue an order placing the member on interim suspension or make a recommendation to the California Supreme Court that the member be summarily disbarred.

<b>Criminal Case Tracking Activity</b>			
	<b>1999</b>	<b>2000</b>	<b>2001</b>
On hand beginning of the year	334	418	502
Received during year	235	266	204
Closed during year	177	206	314
Pending year end	392	478	392
Convictions transmitted to State Bar Court	80	92	92

### Probation Monitoring

The probation monitoring function of the State Bar has been variously housed with the Court, with Intake and with Trials. It is currently under Intake where four deputies, under the supervision of a Supervising Trial Attorney, open and maintain files on probationer attorneys with conditions including: filing quarterly reports, attending Ethics and/ or Client Trust Accounting School, making restitution, and complying with Rule 955 of the State Bar Act. As appropriate, the probation monitors refer violations to the Trials Unit.

## Investigations

The Investigations Unit receives priority cases from Intake. The Unit is comprised of attorneys and investigators who focus on the horizontal processing of the bulk of the matters which are referred for investigation and which are not referred to Specialty Prosecutions. Investigations are conducted under the direction of a deputy trial counsel who also prepares the Notice of Disciplinary Charges, conducts the 20 day conference, and participates in an Early Neutral Evaluation Conference, if necessary. If no settlement or disposition is reached, the Notice of Disciplinary Charges is filed directly with the State Bar Court and the case is then assigned to the General Trials unit for formal prosecution.

Typically, between 5,000 and 6,000 matters are investigated annually. Business and Professions Code Section 6094.5 mandates a normative goal that State Bar investigations be completed within six months for non-complex matters and twelve months for matters designated complex. The Statute also requires that the State Bar issue an annual report quantifying the pendency of open complaints at year's end. Prior to the lay-off, the number of "backlog" complaints (uncompleted investigations pending in the system for more than 6 months at year's end) had not exceeded 400. The following chart, which fulfills the reporting requirement of Section 6094.5, illustrates the dramatic effect the State Bar's fiscal crisis and staff lay-off had on the pending numbers.

<b>Pendency of Open Complaints at Year's End</b>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
0-6 months	6	916	1,017	1,328
7-9 months	435	372	389	306
10-12 months	658	248	224	252
13-21 months	658	478	320	330
21 months plus	318	820	263	147
<b>TOTAL</b>	<b>2,426</b>	<b>2,384</b>	<b>2,213</b>	<b>2,363</b>
TOTAL PENDING MORE THAN SIX MONTHS	2,420	1,918	1,196	1,034
"Backlog" according to statutory definitions	2,217	1,736	1,340	809
Average pendency of days for open complaints	N/A	N/A	324	232
Average pendency of days for dismissed complaints	N/A	N/A	268	268



## **Trials**

The General Trials Unit is made up of trial attorneys and paralegals. This unit is responsible for the formal prosecution of the majority of matters completed and filed by the General Investigation Unit.

The Specialty Prosecutions Unit is made up of trial attorneys, investigators and paralegals who focus on major misappropriation cases, unauthorized practice of law, capping and/or solicitation, insurance fraud, reinstatement to the practice of law following disbarment or resignation with charges pending, reinstatement to the practice of law following two years of actual suspension, moral character proceedings involving State Bar applicants, and other cases as assigned. This unit utilizes a vertical prosecution model where the attorneys and investigators work closely together; the end product is more lawyer driven; and these same attorneys are responsible for the prosecution of the underlying matter in the State Bar Court.

The Appellate Unit is comprised of attorneys responsible for handling matters pending before the Review Department of the State Bar Court. It is housed in the Los Angeles Office, with additional support, as needed, from attorneys in the San Francisco office. This unit handles both final and interlocutory appeals and is also responsible for the office-wide training program.

The following charts reflect the dispositions of discipline cases by the Office of the Chief Trial Counsel over the past four years, and other types of litigation matters the Office worked on in 1999, 2000 and 2001.

<b>Office of the Chief Trial Counsel Dispositions</b>				
	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
Early Neutral Evaluations	--	33	53	87
Admonitions	0	0	0	0
Warning Letter	423	21	0	0
Directional Letter	206	6	0	0
Resource Letter	-	413	401	117
Agreement in Lieu of Discipline	82	19	35	76
Dismissal	2,861	2,355	2,252	2,216
Termination	523	340	482	522
Resignation tendered with charges pending	51	68	93	102
Stipulated discipline filed	44	36 <sup>3</sup>	221 <sup>4</sup>	137 <sup>5</sup>
Notice of Disciplinary charges filed	248	174 <sup>2</sup>	383 <sup>3</sup>	309 <sup>4</sup>

<sup>3</sup> These 210 filings represent 521 complaints.

<sup>4</sup> The 221 stipulations filed represent 336 complaints and the 383 notices filed represent 717 complaints.

<sup>5</sup> The 137 stipulations filed represent 386 complaints and the 309 notices filed represent 610 complaints.

<b>Other Litigation Matters</b>			
	<b>1999</b>	<b>2000</b>	<b>2001</b>
Probation revocation matters	33	129	104
Rule 9-101 violation matters	38	26	48
B & P Code Section 6049.1 matters	7	39	31
Moral character matters	8	6	9
Rule 955 violation matters	53	97	76
Reinstatement matters	12	17	12
B & P Code Section 6007 (b) (1) matters	7	0	1
B & P Code Section 6007 (b) (2) matters	0	3	0
B & P Code Section 6007 (b) (3) matters	8	3	13
B & P Code Section 6007 (b) (2) & (3) -reactive matters	3	1	1
B & P Code Section 6007 (c) matters	7	7	8
Standard 1.4 (c ) (ii) matters	10	6	9
<b>TOTAL</b>	<b>186</b>	<b>334</b>	<b>312</b>

## **Priorities for 2002**

The following areas of program/ operation development under consideration, review and initial development during 2001 will continue to enhance OCTC's efficiency and effectiveness when fully implemented in 2002.

### **Alternative Dispute Resolution (ADR)**

ADR for low-level infractions should provide a viable and appropriate alternative to the existing options of dismissing a case or filing a Notice of Disciplinary Charges. OCTC is working with the Office of the Executive Director to develop a proposal(s) to submit to the Board by the end of Summer, 2002, if not sooner.

### **Drug Court**

OCTC is working with the State Bar Court (SBC) and the Director of the Attorney Diversion and Assistance Program (ADAP) to develop a comprehensive inter-disciplinary approach to addressing the problem of substance abuse that is related to attorney misconduct. The proposal should be completed and ready for submission to the Board by the end of Summer, 2002, if not sooner.

### **Vertical Prosecution**

As of January 1, 2002, OCTC has moved to a "vertical prosecution" model. Simply stated this means that a Deputy Trial Counsel is assigned to a case and oversees it from the moment it becomes an investigation, through trial, settlement or dismissal. In conjunction with the investigator(s) assigned to the case, an initial investigation plan is developed and monitored. When the investigation is completed, the assigned Deputy Trial Counsel is responsible for drafting the Notice of Disciplinary Charges and presenting the case to the State Bar Court.

Also beginning January 1, 2002, was the implementation of specialty teams in the San Francisco and Los Angeles offices. These two teams are assigned the responsibility of identifying those respondents who constitute the most serious and immediate threat of harm to the public and focusing dedicated staff resources for a swift investigation and prosecution against them.

### **Data Collection**

All data collection mechanisms are under review to identify those areas where the information is not complete or those areas where the information is of little value compared to the time it takes to collect and assemble data. The purpose of the review is to determine how the data can be most effectively used in making resource allocation decisions, OCTC performance evaluation and program development or policy recommendations to the Board.

### Training

Ongoing professional development training will be provided to as many OCTC staff as possible, within the restraints of the budget. Most particularly intake staff will be trained in mediation and customer service. Investigation staff will be further trained in investigation skills. Investigation staff and Trial staff will be trained in the use of CASEMAP software. Trial staff will be trained in advocacy skills appropriate to their level of experience. Management staff, including all supervisors, will be trained in performance based management and evaluation.

## **STATE BAR COURT**

The State Bar Court serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. It is the mission of the State Bar Court to hear and decide cases fairly, correctly and efficiently for the protection of the public, the courts and the legal profession. In 2001, the State Bar Court started its 13<sup>th</sup> year as the nation's first (and only) full-time attorney disciplinary and regulatory court.

The State Bar Court has authority to impose public and private reprovls upon California attorneys who have been found to have violated the Rules of Professional Conduct or the disciplinary provisions of the State Bar Act. The State Bar Court may also recommend the imposition of more severe discipline, such as suspension or disbarment, to the California Supreme Court. In the vast majority of cases, the Supreme Court accepts the State Bar Court's recommendation. However, the Supreme Court may, in its discretion, modify the State Bar Court's findings, legal conclusions or recommended discipline or return the matter to the State Bar Court for further hearing.

The State Bar Court is composed of two departments – the Hearing Department and the Review Department. The Hearing Department is the trial level of the State Bar Court and is comprised of five full-time judges (three in Los Angeles and two in San Francisco). Two of the hearing judges are appointed by the Supreme Court. The Governor, the Speaker of the Assembly and the Senate Committee on Rules each appoint one hearing judge.

The Review Department is the appellate level of the State Bar Court. The three-member Review Department consists of the Presiding Judge and two review judges. All of the judges of the Review Department are appointed by the Supreme Court.

In 2001, the State Bar Court's Presiding Judge, the Honorable James W. Obrien, retired at the conclusion of his six-year term of office on November 1, 2001. The Supreme Court appointed the Honorable Ronald W. Stovitz, a State Bar Court review judge since the inception of the court in 1989, to be the State Bar Court's third Presiding Judge. Two new hearing judges (the Honorable Patrice E. McElroy in San Francisco and the Honorable Stanford E. Reichert in Los Angeles) were also appointed by the Supreme Court and took office on December 11, 2001.

While the number of new cases filed in the State Bar Court in 2001 increased slightly from the number of cases filed in 2000 (i.e., from 903 cases in 2000 to 917 cases in 2001), the number of cases disposed of by the State Bar Court and the Supreme Court increased by more than 20% during the same period (from 972 cases in 2000 to 1,169 cases in 2001). As a result, the average number of cases pending in the State Bar Court remains substantially below the average caseload that existed prior to the virtual shutdown of the disciplinary system between June 1998 and March 1999. Because of the lower caseload, the State Bar Court has only filled 34 of its 39 authorized positions. Prior to the shutdown of the discipline system in 1998, the State Bar Court had 52 authorized staff positions.

During 2001, the State Bar Court achieved the following key goals and objectives:

- Began planning for the creation and implementation of a pilot program in the State Bar Court for the treatment and rehabilitation of attorneys in the discipline process who suffer from alcohol or drug abuse problems;
- Maintained the average pendency of cases in the State Bar Court Hearing Department at less than six months;
- Increased the number of final Supreme Court dispositions in disciplinary and regulatory proceedings, based upon State Bar Court recommendations, from 526 in 2000 to 581 in 2001 (an increase of 10 percent). These 581 final Supreme Court dispositions included 47 disbarments, 100 resignations with disciplinary charges pending and 272 cases involving the imposition of some period of actual suspension;
- Increased the number of State Bar Court final dispositions, including the imposition of public and private reprovls and the dismissal of proceedings following an attorney's resignation, from 446 in 2000 to 588 in 2001 (an increase of 32 percent);
- Continued work on the development of a comprehensive case management system for the State Bar Court, to be completed in 2002;
- Provided a smooth transition for the departure of the Presiding Judge and two hearing judges and the arrival of two new State Bar Court hearing judges, which included the timely disposition of pending matters for the departing judges;
- Devised and conducted a comprehensive orientation and training program for the two new State Bar Court hearing judges.

The following charts reflect the numbers of cases filed in the State Bar Court during 2001, as compared to previous years, along with all interim and final dispositions issued by the State Bar Court and the California Supreme Court:

## CASES FILED IN THE STATE BAR COURT

Disciplinary Matters						
	1996	1997	1998	1999	2000	2001
Original matters	612	686	298	245	547	534
Conviction referral	127	139	73	83	96	94
Rule 955 violation	50	50	31	53	53	59
Rule 1-110 violation (former Rule 9-101)	41	34	11	44	17	16
Probation Revocation	59	41	8	34	30	28
Other Jurisdiction 6049.1	10	11	11	9	19	14
<b>Subtotals</b>	<b>899</b>	<b>961</b>	<b>432</b>	<b>468</b>	<b>762</b>	<b>745</b>

Regulatory Matters						
Arbitration Enforcement	5	1	2	0	4	18
Resignation with charges pending	93	115	52	69	91	101
Trust re practice	1	0	0	0	0	0
Inactive enrollment 6007(c)	30	11	2	7	7	7
Inactive enrollment 6007(b)	0	3	0	0	0	1
Inactive enrollment 6007(b)2	3	7	2	0	3	0
Inactive enrollment 6007(b)3	13	11	4	8	5	12
Reactive 6007(b)1	0	0	0	1	0	0
Reactive 6007(b)2	1	0	2	2	0	1
Reactive 6007(b)3	2	0	1	1	1	0
Reactive 6007(c)	0	0	1	0	0	0
Reactive Arbitration Enforcement	0	0	1	0	0	2
Standard 1.4(c)(ii)	11	3	12	10	6	9
Reinstatement	8	12	16	12	17	12
Moral Character	9	5	4	8	6	9
Lawyer Referral Service	1	0	0	1	0	0
Legal Specialization	0	0	0	0	1	0
<b>Subtotals</b>	<b>177</b>	<b>168</b>	<b>99</b>	<b>119</b>	<b>141</b>	<b>172</b>

<b>TOTALS</b>	<b>1,076</b>	<b>1,129</b>	<b>531</b>	<b>587</b>	<b>903</b>	<b>917</b>
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## STATE BAR COURT INTERIM DISPOSITIONS

Disciplinary Matters						
	1996	1997	1998	1999	2000	2001
Augment to include discipline	43	38	33	14	17	13
Conviction referral	116	109	57	51	73	74
Finding of Moral Turpitude	0	0	0	1	0	0
Grant stay of interim suspension	2	3	1	3	0	0
Grant stay of suspension	0	0	0	6	0	3
Grant temporary stay of interim suspension	15	9	1	2	1	0
Grant temporary stay of suspension	3	11	2	5	18	4
Interim Suspension	44	54	32	39	45	35
Interim Suspension and Referral	0	0	2	5	5	4
Suspension/failure to pass professional responsibility examination	119	73	30	70	40	42
Modify order	3	2	0	0	0	0
Moral turpitude not found	0	0	0	0	0	0
Remand for hearing	0	8	0	0	1	0
Terminate Interim Suspension	0	0	1	0	0	0
Transmit Final	1	0	0	0	0	0
Vacate previous order	0	16	0	0	0	0
<b>Subtotals</b>	<b>346</b>	<b>323</b>	<b>159</b>	<b>196</b>	<b>200</b>	<b>175</b>

Regulatory Matters						
Restrict Practice 6007(h)	0	1	0	3	3	3
Transfer Inactive 6007(d)	10	14	0	4	15	5
Transfer Inactive 6007(e)	46	124	121	104	137	131
<b>Subtotals</b>	<b>56</b>	<b>139</b>	<b>121</b>	<b>111</b>	<b>155</b>	<b>139</b>

<b>TOTALS</b>	<b>402</b>	<b>462</b>	<b>280</b>	<b>307</b>	<b>355</b>	<b>314</b>
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## STATE BAR COURT FINAL DISPOSITIONS

Disciplinary Dispositions						
	'96	'97	'98	'99	'00	'01
Admonition	2	0	0	0	0	0
Deny other petitions	36	27	6	0	0	0
Deny reconsideration	0	0	0	0	0	0
Dismissal	152	139	120	83	45	42
Extend condition of reproof	0	0	1	0	0	0
Extend ordered effective date	1	0	0	0	0	0
Extend probation	0	0	0	1	3	4
Extend time to pass professional responsibility examination	56	42	14	46	18	31
Extension to comply with Rule 955	1	0	1	0	0	0
Grant/deny other requests in part	2	0	0	0	0	0
Grant temporary stay of suspension	0	0	8	0	0	0
Modify effective date of suspension	0	0	0	0	0	0
Modify order	1	0	33	9	28	17
Modify decision	0	0	20	0	0	2
Modify opinion	0	2	0	0	0	0
Modify probation	0	4	5	11	1	1
Modify stipulation	0	0	63	20	31	57
Moral Turpitude not found	0	1	0	0	0	0
No additional discipline	0	1	0	0	0	0
Private reproof	4	4	2	0	4	0
Private reproof with conditions	95	115	77	31	70	122
Public reproof	2	2	0	1	1	0
Public reproof with conditions	53	64	33	20	43	50
Set aside dismissal	0	1	1	1	0	0
Summary disbarment	0	6	0	5	0	0
Terminate conviction proceeding	2	1	1	1	0	0
Terminate interim suspension	10	15	9	6	3	4
Termination – death	4	8	0	1	6	6
Termination - disbarment	26	20	1	4	0	3
Termination - resignation	85	130	54	55	67	113
Vacate previous order	58	33	41	9	15	5
Withdrawn	6	6	0	1	0	0
<b>Subtotals</b>	<b>596</b>	<b>621</b>	<b>490</b>	<b>305</b>	<b>335</b>	<b>457</b>

## STATE BAR COURT FINAL DISPOSITONS

Regulatory Dispositions						
	'96	'97	'98	'99	'00	'01
Decline retransfer 1.4 (c)(ii)	2	1	0	0	1	0
Decline transfer 6007(b)	0	3	1	1	0	0
Decline transfer 6007(c)	4	0	0	2	0	0
Decline transfer 6007(d)	1	0	0	0	0	0
Deny admission	5	5	4	2	1	2
Deny petition/application	1	1	0	2	0	0
Deny reinstatement	3	10	2	3	4	5
Deny petition to shorten time to file petition for reinstatement	0	0	0	0	0	0
Dismissal	8	6	3	8	6	7
Grant admission	1	2	2	0	1	0
Grant Legal Specialization	0	1	0	0	0	0
Grant petition to shorten time to file petition for reinstatement	0	0	0	0	0	0
Grant trust fund	0	0	0	1	0	0
Modify Decision	0	0	0	0	0	2
Modify Stipulation	0	0	0	0	0	1
Modify order	0	0	0	3	1	0
Restrict practice - 6007(h)	0	7	0	0	0	0
Retransfer active-Arbitration Enforcement	0	0	1	0	0	2
Relief from Actual Suspension -- 1.4(c)(ii)	7	7	7	12	6	6
Retransfer active 6007(b)	1	2	3	4	0	2
Retransfer active 6007(c)	0	0	1	0	2	0
Retransfer active 6007(d)	1	0	0	0	0	1
Retransfer active 6007(e)	8	17	21	5	19	27
Terminate moral character proceedings	0	0	0	1	0	1
Termination-death	0	0	0	1	0	1
Termination-disbarment	3	2	0	0	0	0
Termination-resignation	2	1	0	0	0	0
Transfer inactive-Arbitration Enforcement	4	1	2	0	2	9
Transfer inactive 6007(b)	22	18	6	3	8	9
Transfer inactive 6007(c)	12	82	47	52	85	50
Transfer inactive 6007(d)	0	0	9	0	0	0
Transfer inactive 6007(e)	0	0	0	0	0	0
Vacate Previous Order	0	1	0	1	0	0
Withdrawn	3	4	3	2	5	6
<b>Subtotals</b>	<b>88</b>	<b>171</b>	<b>112</b>	<b>103</b>	<b>141</b>	<b>131</b>
<b>TOTALS</b>	<b>684</b>	<b>792</b>	<b>602</b>	<b>408</b>	<b>446</b>	<b>588</b>

## CALIFORNIA SUPREME COURT INTERIM DISPOSITIONS

Disciplinary Dispositions						
	1996	1997	1998	1999	2000	2001
Grant writ of review	0	0	0	2	0	0
Remand for Hearing	2	0	2	0	4	1
<b>Subtotals</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>

Regulatory Dispositions						
Granted writ of review	0	0	0	0	0	0
Remand for Hearing	2	0	0	0	0	0
<b>Subtotals</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>TOTALS</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>
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## CALIFORNIA SUPREME COURT FINAL DISPOSITIONS

Disciplinary Dispositions						
	'96	'97	'98	'99	'00	'01
Deny petition for review, rehearing, reconsideration	7	7	8	0	0	0
Disbarment	77	76	96	38	79	47
Summary Disbarment	0	2	4	2	3	8
Dismissal	0	2	0	1	8	1
Early Termination of Probation	0	0	0	0	0	3
Extend probation	6	3	6	1	3	3
Granted writ of Review	0	0	1	0	0	0
License to practice cancelled	1	0	0	0	0	0
Modify opinion	0	0	0	0	0	0
Modify order	1	9	0	2	0	0
Modify probation	2	0	0	4	0	0
Probation - no actual suspension	0	1	2	1	0	0
Resignation with charges pending	89	116	54	67	89	100
Revoke probation/actual suspension	16	24	13	7	14	13
Revoke probation/Stayed/Actual suspension	0	0	0	0	0	1
Suspension actual with probation	2	3	6	3	8	7
Suspension actual (without probation)	8	1	3	6	3	3
Suspension stayed/some actual suspension with probation	206	276	350	120	212	272
Suspension stayed/some actual suspension with no probation	0	0	0	0	0	4
Suspension stayed with conditions	0	3	2	2	1	3
Suspension stayed with probation	90	90	125	28	84	84
Suspension with conditions	8	12	1	5	17	13
Termination – death	2	0	0	2	0	1
Termination – disbarment	3	7	0	0	0	3
Termination – resignation	1	1	3	0	0	5
Vacate Previous Order	6	1	0	2	0	3
<b>Subtotals</b>	<b>525</b>	<b>634</b>	<b>674</b>	<b>291</b>	<b>521</b>	<b>574</b>

Regulatory Dispositions						
Deny petition/application	2	0	0	0	0	0
Grant reinstatement	4	8	5	6	5	6
Granted writ of Review	0	0	1	0	0	0
License to Practice Cancelled	0	0	0	0	0	1
<b>Subtotals</b>	<b>6</b>	<b>8</b>	<b>6</b>	<b>6</b>	<b>5</b>	<b>7</b>

<b>TOTALS</b>	<b>531</b>	<b>642</b>	<b>680</b>	<b>297</b>	<b>526</b>	<b>581</b>
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## **CLIENT SECURITY FUND**

In 1972, the Client Security Fund was established by State Bar-sponsored legislation in recognition that disciplinary measures, as well as civil and criminal proceedings, were often insufficient remedies to alleviate pecuniary losses caused by a lawyer's dishonest conduct in the practice of law. Thus, the Client Security Fund is designed as a remedy for legal consumers, in addition to, but separate from discipline. While the discipline system protects the public by disciplining and removing errant lawyers from the practice of law, the fund protects the public by focusing on individual victims. Since its inception, the fund has reimbursed applicants approximately \$50 million. In 2001, the fund paid \$4,435,212 on 609 awards.

Financed in 2001 by a \$40 annual assessment added to the membership dues paid by California lawyers, the Client Security Fund reimburses victims up to \$50,000 for losses due to attorney theft or an act equivalent to theft. While the number of dishonest lawyers is extremely low, the losses suffered by clients can be devastating. The fund is a cost-effective way of providing reimbursement to victims that is generally not available from any other source. Furthermore, the fund provides the legal profession with a unique opportunity to promote public confidence in the administration of justice and the integrity of the legal profession.

In 2001, the number of new applications received by the Client Security Fund returned to historical levels. As the chart below reflects, the filing rate for new applications dropped significantly in 1998-1999 due to the virtual shutdown of the discipline system during the fee bill crisis (i.e., June 1998 through March 1999). This two-year decrease in the number of applications filed created an unusually high fund balance. Due to this high fund balance, the annual assessment charged to State Bar members in support of the fund was reduced from \$40.00 to \$35.00 for years 2002 and 2003.

<b>Application Year</b>	<b>Applications Filed</b>	<b>Applications Processed</b>	<b>Amount Requested</b>	<b>Number of Awards</b>	<b>Amount awarded</b>
2001	1,114	1,069	\$11,297,152	609	\$4,435,212
2000	1,049	1,095	\$12,461,489	595	\$3,673,850
1999	611	767	\$8,808,118	387	\$2,811,090
1998	652	978	\$11,796,967	517	\$3,627,082
1997	1,217	1,230	\$13,290,653	708	\$4,660,614
1996	1,082	1,043	\$13,572,019	578	\$5,539,449
1995	975	998	\$9,632,520	543	\$3,229,146
1994	1,065	870	\$10,653,545	418	\$2,514,583
1993	1,257	1,081	\$13,724,851	517	\$3,104,826
1992	1,177	1,258	\$15,148,550	604	\$4,162,103

## **MANDATORY FEE ARBITRATION**

Pursuant to Business & Professions Code section 6200 *et seq.*, the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients. In addition to processing requests for arbitration through the State Bar's own arbitration program, the Office of Mandatory Fee Arbitration is also responsible for overseeing the approximately 43 local bar association fee arbitration programs statewide. The Office provides information to all attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program. Its fee arbitration program processes approximately 250 cases per year.

Further, the State Bar has exclusive jurisdiction to enforce arbitration awards requested by clients after an award for a refund of fees has become binding and final. Business & Professions Code section 6203, subdivision (d) authorizes the assessment of administrative penalties and the involuntary inactive enrollment of attorneys who fail to respond to the enforcement request. The Office of Mandatory Fee Arbitration processes approximately 80 requests for enforcement annually. Both the State Bar arbitration and enforcement cases rely on a volunteer Presiding Arbitrator for procedural rulings as permitted by the rules of procedure.

The Office consists of a Director, three senior administrative assistants, and one administrative secretary. The staff handles all telephonic and written requests for information concerning fee arbitration, administers the State Bar's fee arbitration program and processes requests for enforcement of awards, filing motions in the State Bar Court for inactive enrollment of attorneys as appropriate.

The Office also staffs and coordinates the activities of the State Bar Standing Committee on Mandatory Fee Arbitration. The Committee consists of approximately 17 lawyer and public members. It reports to the Board Committee on Regulation, Admission and Discipline. The Committee meets about eight times annually.

The Committee is responsible for reviewing case law and proposing new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting training programs for fee arbitrators throughout the state, issuing written training materials for arbitrators and arbitration advisories, and presenting legal education courses on selected topics concerning attorney's fees and the fee arbitration program. All local and State Bar fee arbitration programs must obtain Board approval of its rules of procedures and any amendments made thereto.

## KEY ACCOMPLISHMENTS OF THE COMMITTEE ON MANDATORY FEE ARBITRATION IN 2001:

**Arbitrator Training Programs:** During the course of the committee year, the Committee organized and presented a total of nine (9) three- hour fee arbitrator training programs. Free MCLE credit was offered to attorney arbitrators. A rotating panel of four Committee members presents the training program. In addition, a binder of materials prepared by the Committee, featuring an arbitrator handbook and extensive case law summary and index, is distributed to the arbitrators who attend the program.

**State Bar Arbitrator Recruitment Efforts:** The State Bar Fee Arbitration panel consists of approximately 250 volunteer arbitrators, most of whom are lawyer arbitrators. As a result of ongoing efforts to recruit new arbitrators, about 40 new arbitrators were appointed by the Board to serve on the panel this year.

**MCLE programs:** The Committee presented three programs for CLE credit through the local bar associations, two programs at the State Bar 2001 Annual Meeting in Anaheim, and a CLE program at the State Bar's Winter Education Institute in January 2001.

**Arbitration Advisories:** In addition to the MCLE programs, the Committee is responsible for identifying issues of administrative or legal significance in the area of fee arbitration and developing them into written advisories. The advisories are distributed to local bar program committees and administrators for dissemination to fee arbitrators. These advisories are also available to members and the public on the State Bar's website. The Committee published two such advisories in 2001.

**Advice to Local Bar Programs:** The Committee provides advice and guidance to the 43 local bar fee arbitration programs in the state on an as-needed basis. The issues and questions presented are addressed in regularly scheduled meetings of the Committee. Most issues raised by the local programs are handled informally by the Office Director or the Presiding Arbitrator on a daily basis. In 2001, the Office of Mandatory Fee Arbitration handled 1,674 telephone inquiries on its main line from the public, fee arbitration parties, fee arbitrators, attorneys and the local bar programs. The Office hosted two local bar administrators' roundtable sessions for fee arbitration program staff.

Mandatory Fee Arbitration Program						
	1996	1997	1998	1999	2000	2001
Fee Arbitration Requests Filed with State Bar	220	310	177	73	166	142
Fee Arbitration Requests Assigned by Local Bar	2687	2570	2000	n/a	n/a	n/a
Requests for Enforcement of Award Filed	62	62	27	31	82	65
Arbitrator Training Sessions	5	5	3	n/a	8	9
Fee Agreement Seminars	3	3	4	n/a	2	4

## **PROFESSIONAL COMPETENCE**

The State Bar's ongoing efforts to maintain and improve the quality of legal services available in California are among its most important programs in support of public protection and the effective administration of justice.

Competency-based efforts encompass a broad cross-section of activities, ranging from developing amendments to the California Rules of Professional Conduct and issuing non-binding advisory ethics opinions to a program providing assistance to lawyers with substance abuse and emotional distress problems.

### **Rules of Professional Conduct**

In July 2001, then State Bar President Palmer Madden called for the reinstatement of the State Bar's special Commission for the Revision of the Rules of Professional Conduct. The decision was made in consultation with the Supreme Court, incoming State Bar President Karen Nobumoto and the Board of Governors. The group has begun the process of a complete review of the rules in light of developments over the past 10 years and current trends nationally. The specific charge of the commission reveals the rationale for its reinstatement:

"The commission is to evaluate the existing California Rules of Professional Conduct in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the rules occurred in 1989 and 1992. In this regard, the commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the ABA Ethics 2000 Commission, the American Law Institute's Restatement of the Law Third, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to multidisciplinary practice, multijurisdictional practice, court facilitated propria persona assistance, discrete task representation and other subjects that have a substantial impact upon the development of professional responsibility standards.

The Commission is to develop proposed amendments to the California Rules that:

1. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;
2. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
3. Promote confidence in the legal profession and the administration of justice; and



4. Eliminate and avoid unnecessary differences between California and other states, fostering the evolution of a national standard with respect to professional responsibility issues.”

The State Bar's Committee on Professional Responsibility and Conduct ("COPRAC") assists the Board of Governors by studying and providing comment on the Rules of Professional Conduct and other laws governing the conduct of attorneys.

COPRAC continues to monitor important state and national studies of professional responsibility issues, including ABA Ethics 2000 Commission recommendations to amend the ABA Model Rules of Professional Conduct, and multidisciplinary practice studies.

In addition, COPRAC handled two rule studies in response to pending legislation concerning attorneys for government agencies acting as whistleblowers (AB 363) and conflicts of interest arising from tripartite relationships between insurance defense counsel and the carrier (AB 2069). On both issues COPRAC submitted comprehensive reports to the State Bar Board of Governors. Regarding the AB 363 study, COPRAC developed proposed amendments to rule 3-600 of the Rules of Professional Conduct. The amendments were distributed by a board committee for a 60-day comment period. Regarding the AB 2069 study, the Board considered a COPRAC report and then established a joint task force of the Judicial Council and the State Bar to continue the study. Following its study, the joint task force recommended proposed amendments to rule 3-310 of the Rules of Professional Conduct.

## **Ethics Opinions**

COPRAC also issues formal ethics opinions as a guide to members in maintaining their ethical standards. The non-binding opinions are developed in response to questions posed by bar groups or individuals members. In 2001, COPRAC worked on the following opinions:

### **Opinions Published in 2001**

#### Formal Opinion No. 2001-155

**ISSUE:** What aspects of professional responsibility and conduct must an attorney consider when providing an Internet web site containing information for the public about her availability for professional employment?

**DIGEST:** An attorney's Internet web site providing to the public information about her availability for professional employment is a “communication” under rule 1-400(A) of the Rules of Professional Conduct and an “advertisement” under Business and Professions Code sections 6157 to 6158.3. As such, it is subject to the applicable prohibitions on false, misleading, and deceptive messages. The content of the pages constituting the web site must be prepared carefully to satisfy these rules. This applies to the words that make up the message and to the images and sounds which are part of the presentation. Under the facts presented, the web site is not a “solicitation”

under rule 1-400(B) even if it includes electronic mail facilities allowing direct communication to and from the attorney. The attorney also must be aware of the possibility that the web site might be subject to regulation by other jurisdictions or that it might be considered the unauthorized practice of law in other jurisdictions.

Formal Opinion No. 2001-156

**ISSUE:** Under rule 3-310(C) of the California Rules of Professional Conduct, does a conflict of interest arise when constituent sub-entities or officials of a city (e.g., the city council and the mayor) seek legal advice on the same matter and the constituents' positions on the matter are antagonistic?

**DIGEST:** Whether a conflict of interest arises under rule 3-310(C) of the California Rules of Professional Conduct ordinarily depends on a determination of the city attorney's client. An attorney who represents an entity generally has only one client, the entity itself. This is true when an attorney represents a private corporation, which acts through its directors, officers, and others. This also is generally true when an attorney represents a municipal corporate entity, which acts through its constituent sub-entities and officials. Consequently, since the constituent sub-entities and officials of a city are normally not separate clients of the city attorney, a city attorney's provision of legal advice on the same matter to constituent sub-entities and officials will not necessarily give rise to a conflict of interest even if the constituent sub-entities and officials take contrary positions on the matter. In representing the client, the city attorney, like a private attorney, "shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement" as required by rule 3-600(A). Constituent sub-entities may become separate clients only if they have lawful authority to act independently of the public entity and if they take a position contrary to the overall public entity's position on a matter within the ambit of the constituent sub-entities' independent authority.

Formal Opinion. No. 2001-157

**ISSUE:** What ethical duties does an attorney have regarding the retention of former clients' files? Is the attorney ethically required to retain the files for any specific length of time following the completion of representation?

**DIGEST:** As to original papers and other property received from a former client, including estate planning and other signed, original documents delivered under Probate Code section 710, the attorney's duties are governed by the law relating to deposits (bailments) or by the Probate Code. With respect to other "client papers and property" to which the former client is entitled under rule 3-700, absent a previous agreement, the attorney has an obligation to make reasonable efforts to obtain the former client's consent to any

disposition that would prevent the former client's taking possession of the items. If, after reasonable efforts, the attorney is unable to locate the former client or obtain instructions, the attorney may destroy the items unless he or she has reason to believe (1) that preservation of the items is required by law, or (2) that destruction of the items would cause prejudice to the client, i.e., that the items are reasonably necessary to the client's legal representation. Since the "client papers and property" to which the former client is entitled may include a variety of items, the attorney may have an obligation to examine the file contents before the file is destroyed. No specific time period for retention of a particular item can be specified. Files in criminal matters should not be destroyed without the former client's consent while the former client is alive.

### **Opinions Circulated for 90-day Public Comment Period**

Proposed Interim Opinion No. 98-0002 (Comment deadline: March 30, 2001)

**ISSUE:** In the context of a civil action alleging police brutality, is a non-party police officer witness a "public officer" for the purposes of rule 2-100(C)(1) of the California Rules of Professional Conduct?

**DIGEST:** A "public officer" under rule 2-100(C)(1) is a person to whom a communication would be constitutionally protected by the First Amendment right to petition the government. Such a person would be one who, for example, has the authority to address, clarify or alter governmental policy; to correct a particular grievance; or to address or grant an exemption from regulation (or if the employee otherwise is obligated to provide information on the subject of the inquiry). Under this standard, an attorney, while representing a client in a matter, may not directly or indirectly communicate with a non-party police officer witness whom the attorney knows to be represented by counsel in that matter about the subject of the representation without the consent of that counsel unless the police officer is a "public officer." If the police officer is a "public officer," then the 2-100(A) contact prohibition does not apply. Ordinarily, a line police officer would not be a "public officer."

Proposed Interim Opinion No. 93-0005 (Commend deadline: July 3, 2001)

**ISSUE:** (1) In a proposed fee agreement for use with a new client, may a lawyer ethically include a provision for formal mediation of future disputes between the client and the lawyer involving (a) claims for affirmative relief against the lawyer based on alleged malpractice or professional misconduct or (b) fees and costs? If so, may the lawyer ethically include in the agreement (2) designation of a specific mediation provider and process for mediation; (3) authority for the mediation provider to select a neutral mediator, if the client and lawyer do not agree upon one; and (4) a provision allocating costs of the mediation?

DIGEST: The answer to each of the questions posed is "Yes." There is no statute, rule, or other provision of California law that prohibits a lawyer and client from agreeing to mediate future disputes. As a result, (1) a lawyer may include in a fee agreement a provision by which client and lawyer agree to mediate future disputes about (a) claims against the lawyer, such as attorney malpractice, or (b) fees and costs. (2) The agreement may also provide that the mediation will be conducted by a neutral mediator provided by a designated mediation service at a particular location and pursuant to the mediation procedure adopted by that provider. Further, the agreement may also provide (3) that the designated mediation service will select the mediator only if the parties fail to do so and (4) that each party will bear his or her own expenses pursuant to the fee agreement.

Proposed Interim Opinion No. 97-0001 (Comment deadline: December 3, 2001)

ISSUE: 1. What ethical constraints govern an attorney whose client has conferred upon her authority to settle, without instituting litigation, claims of the client for specific percentages of the amounts claimed, when the client has disappeared?

2. What ethical constraints govern the attorney's right to collect legal fees from settlement proceeds when communication with the client is not possible?

DIGEST: 1. Under the law of agency, an attorney who has not been specifically authorized by a client to settle a claim has no implied or apparent authority to bind a client to any settlement. If the client has authorized the attorney to settle specific claims without instituting litigation, to receive the settlement proceeds, and to take a percentage of the recovery in payment of her fees, the attorney still has an ethical obligation to represent the client competently and to avoid reasonably foreseeable prejudice to the client. Depending on the circumstances, the attorney may have an obligation to make reasonable efforts to locate the client and communicate with the client before proceeding with the settlement. If the settlement offer falls outside the attorney's authorization, the attorney does not have a duty to file an action to avoid the running of the statute of limitations.

2. If the settlement is permitted by the terms of the client's authorization, if the fee agreement is enforceable, and if the client's authorization to the attorney includes endorsing the client's name on checks paid in settlement of claims, then the proceeds must be placed in the attorney's client trust account and attorney's fees promptly withdrawn from the account.

Proposed Interim Opinion No. 95-0005 (Comment deadline: February 12, 2002)

ISSUE: What are the duties of a lawyer who represents a corporation as its outside counsel, and who also simultaneously represents an officer of that

corporation individually, when the lawyer receives information that creates a conflict between the lawyer's duties to the two clients?

**DIGEST:** When an outside lawyer who currently represents a corporation as its general counsel, and who also simultaneously represents one of the corporate officers in unrelated personal matters, learns that the officer's behavior has exposed the corporation to potential liability, the lawyer must protect that information as a client secret if the lawyer learned the information from the officer or as a result of representing the officer. Even if the lawyer learns the information in some other manner, the lawyer's duty of undivided loyalty to the officer prevents the lawyer from advising the corporation concerning the officer's alleged behavior because such advice would be adverse to the officer.

### **Ethics Hotline**

This statewide toll-free confidential service (1-800-2-ETHICS) provides California attorneys with information and discussion on routine ethical questions. In 2001, Hotline staff answered 18,748 calls and distributed 1,105 packets of local bar association and State Bar ethics opinions to interested persons.

#### **2001 Percentage of Frequently Named Ethics Issues**

<b>Primary Ethics Issues</b>	<b>Percentage</b>
Fees and costs for legal services	20.2%
Conflicts of interest	16.3%
Misconduct/Moral Turpitude/Trial Conduct	14.0%
Attorney advertising and solicitation	8.9%
Communications with clients, adverse party and others	7.6%
Unauthorized practice of law	7.6%
Withdrawal from Employment/Termination	7.0%
Client Confidential Information	6.8%
Clients files	6.3%
Other	2.4%

## **Publications**

**California Compendium on Professional Responsibility (Compendium).** The State Bar publishes the Compendium, a compilation of local, state and national ethics information. It is updated annually. In 2001, 497 Compendiums updates and new subscriptions were sold.

**California Rules of Professional Conduct and State Bar Act (Publication 250).** Publication 250 is a convenient resource book which includes: The California Rules of Professional Conduct (past and present); the State Bar Act; California Rules of Court related to the State Bar and members of the State Bar; various statutes relating to discipline and attorneys and the duties of members of the State Bar; the Minimum Continuing Legal Education Rules and Regulations; and the Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California). This publication is updated annually and is also available on the State Bar website. In 2001, approximately 2,800 copies of Publication 250 were sold.

**Handbook on Client Trust Accounting for California Attorneys ("Handbook").** The Handbook is a practical guide created to assist attorneys in complying with the record keeping standards for client trust accounts which went into effect on January 1, 1993. The Handbook includes a copy of the standards and statutes relating to an attorney's trust accounting requirements; a step-by-step description of how to maintain a client trust account; and sample forms.

In 2001, approximately 350 copies of the handbook were sold.

**Ethics School Program Videotape.** This video program was produced in 1994 and was designed to offer the highlights of the State Bar's Ethics School Program touching on the following four topics: formation of the attorney/client relationship; withdrawal from employment; client trust accounting; and reportable actions. The program is approved for one hour of MCLE credit in legal ethics.

**Lawyers Personal Assistance Program.** The Lawyers Personal Assistance Program provides members with education, confidential counseling and referrals about chemical dependency and emotional distress. The free and confidential 24-hour assistance line can be reached by calling 1-800-341-0572. In addition, the program offers MCLE credit to bar groups and law firms and has produced videotapes on chemical dependency and emotional distress. A brochure entitled "When Attorneys Need Help" is offered to MCLE providers. Workshops are offered to law firms and bar associations throughout the state. The program also offers presentations at the State Bar Annual Meeting each year.

In 2001, the program brochures were updated and reprinted. Two 25,000 piece random outreach mailings of the brochures are made to the membership annually to heighten the awareness of the availability of this program.

## **Special Projects**

### Annual Statewide Ethics Symposium

On June 16, 2001, COPRAC held a Statewide Ethics Symposium at Western State University College of Law in Fullerton. The event brought together experts from all aspects of the professional responsibility field including: ethics professors, judges, ethics consultants, State Bar staff, local ethics committee leaders, expert witnesses, and representatives of the defense bar. The symposium's scheduled topics, which were presented by an impressive array of panelists, featured: "Who is the Lawyer's Client I: Conflicts of Interest in Representing the Insured"; "Civil Practice Breakout—Who is the Lawyer's Client II: Conflicts of Interest within the Corporate Family—When Does (or should) the Entire Corporate Family Become the Client?"; Criminal Law Practice Breakout—Behind the Blue Line: What are the Ethical Obligations of a Prosecutor who Suspects a Police Officer is not Being Truthful?"; The Lawyer as Whistleblower: A Reassessment of the Lawyer's Duty of Confidentiality under Business & Professions Code §6068(e); and "Scaling Ethical Walls (Reprise): A Reassessment of the Limits of Non-Consensual Screening in California". Each of the panels included interactive sessions providing a unique opportunity for high level discussion with the dialogue ranging from humorous to heated. In addition to the panels, then Bar President Palmer Madden provided opening remarks, and served as a moderator for one of the panels.

### Annual Meeting Programs

In September 2001, the Office of Professional Competence offered eleven ethics and/or competence related educational programs at the State Bar's Annual Meeting in Anaheim. The topics covered were: Recent Significant Developments Affecting the Law of Lawyers; Ethics for Government Lawyers: Criminal and Civil Prosecutors; The Complete Story of Attorneys' Fees; Ethics in Using Technology in the Law Office; Methods for Identifying and Avoiding Conflicts; Changing Your "Stress Filter"; Chemical Dependency and Emotional Distress (four programs); I OBJECT! You be the Judge (co-sponsored with the American Inns of Court).

### Local Bar Outreach Programs

In cooperation with local bar associations, staff conducted local bar ethics programs throughout the year 2001 at various locations. Program topics ranged from conflicts of interest to recent developments in ethics, and were selected by working closely with local bar leaders familiar with the kinds of issues relevant for the particular legal community. The bar associations of Napa, Sonoma, Contra Costa and San Francisco counties were among the groups who sought and received the presentations.

### Competence Resources on the State Bar Website

In 2001, much work was accomplished in the posting of ethics and competence related resources on the Bar's website. The following resources are now available online: new Ethics Research Online area available from the Bar's homepage which organizes the

Professional Competence online materials, as well as other ethics research tools available to members from the Bar's site making the content more easily accessible from one logical place; the posting of COPRAC draft opinions and rule amendments circulating for public comment; posting of year 2001 updates to the California Rules of Professional Conduct and The State Bar Act and other provisions governing the duties of attorneys; and a new web page featuring the State Bar of California Commission for the Revision of the Rules of Professional Conduct.



## **OFFICE OF CERTIFICATION**

The Office of Certification develops standards for certification programs and efficiently administers such programs. In addition to administering attorney compliance with the Minimum Continuing Legal Education ("MCLE") program and certifying providers and activities for MCLE credit, the Office administers the following certification programs:

### **Foreign Legal consultants**

Under court rule, this program certifies applicants licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California. There are currently 20 certified foreign legal consultants, (an increase of 6 from the previous year.)

### **Law Corporation and Limited Liability Partnerships ("LLP's")**

By statute, attorneys who wish to practice law either as a professional law corporation or a limited liability partnership must be registered by the State Bar. At the end of 2001, there were 6,085 registered law corporations (an increase of 122 from the previous year) and 1,710 LLP's (an increase of 143 from the previous year).

### **Lawyer Referral Services**

Pursuant to Business and Professions Code Section 6155, the Office certifies entities that operate for the direct or indirect purpose of referring clients to attorneys in California. Currently, there are 60 certified lawyer referral services (an increase of 3 from the previous year.)

### **Legal Specialization**

The Legal Specialization program certifies attorneys who specialize in the following areas of law; appellate; criminal; estate planning; trust and probate; family; immigration and nationality; personal and small business bankruptcy law; taxation; and worker's compensation. Exams in all areas are administered every two years. Certified specialists must recertify every five years. Currently, there are 3,701 certified legal specialists (an increase of 143 from the previous year.)

### **Practical Training of Law Students ("PTLS")**

This program certifies law students to provide legal services under the supervision of an attorney. In the year 2001, the office processed approximately 1,100 PTLS applications (an increase of 55 from the previous year.)

**Pro Hac Vice and Out-of-State Attorney Arbitration Counsel** (in cooperation with the local bar associations, “**OSAAC**”)

The Pro Hac Vice program assists the California judicial system by maintaining statewide records of out-of-state attorneys who make applications to appear in California courts on particular cases in accordance with the requirements of Rule 983, California Rules of Court.

Pursuant to Rule 983.4, California Rules of Court, the OSAAC program maintains statewide records of certificates served on the State Bar by out-of-state attorneys seeking permission to represent a party in the course of, or in connection with, an arbitration proceeding in California.

In the year 2001, approximately 2370 such records were filed with the State Bar (an increase of 246 from the previous year.)

**Special Masters**

Pursuant to Penal Code Section 1524, this program maintains a list of attorneys qualified to serve as special masters who can be appointed by courts of record. In response to a recommendation made by the Office of Certification, the Board adopted rules and regulations for the Special Masters program, effective April 6, 2001. There are currently 435 qualified special masters.

**Minimum Continuing Legal Education (“MCLE”)**

During the year 2001, the State Bar sent MCLE compliance cards to approximately 50,000 of its Group 3 members.

During the year 2001, the State Bar suspended 1,393 of its Groups 1 & 2 members for non-compliance.

During the year 2001, the State Bar received 2,019 applications for provider and activity approval. By the end 2001, there were approximately 1,200 approved providers, an increase of 54 from the previous year.

## **EDUCATION**

The State Bar's numerous educational activities are scattered throughout a number of offices. Since the advent of continuing legal education requirements, the Bar has become one of the biggest MCLE providers in the state, offering hundreds of classes, seminars and workshops to attorneys annually to help them meet those requirements.

### **Section Education and Meeting Services**

The Bar's 16 sections, each dealing with a specific area of law, have a membership of 58,676. Although originally established as a way of expanding professional contacts and increasing expertise, the sections have evolved into education entities.

Each section produces a quarterly newsletter, which keeps section members up to date on timely developments in the field and advertises upcoming MCLE programs and other activities sponsored by the section. The newsletters frequently include lengthy articles on issues of importance to practitioners in the field.

In 2001, the sections produced 226 education seminars and programs. The vast majority of programs were individually sponsored section events and the remainder were offered at one Section Education Institute in the Spring and at the Annual Meeting in September.

Eight sections - Litigation, Antitrust, Labor, Environmental, Business, Estate Planning, Intellectual Property, and Real Property - held annual weekend programs offering education credit.

In addition, the Office of Section Education and Meeting Services acts as a central registry for all State Bar-sponsored continuing legal education programs, including those offered by the sections. In total, the office handled 370 MCLE programs in 2001.

## **GENERAL FUND AND MEMBERSHIP FEES**

In 2001, the annual membership fee for active members was \$395. Members who demonstrated that their annual income from the practice of law was less than \$40,000 were eligible for a waiver of 25 percent of the annual membership fee and if their annual income from the practice of law was less than \$25,000 they were eligible for a waiver of 50 percent of the fee.

Most of the annual membership fee supports the State Bar's General Fund. A portion of the fee is assessed for the Client Security Fund (\$40) and for the Building Fund (\$10). The annual membership fee does not support the program for admission to membership in the State Bar, which is a self supported program. Voluntary programs are not supported by the annual membership fee, they are supported by voluntary contributions. The State Bar's General Fund provides resources to operate programs which serve both the public and the State Bar's active and inactive members. These programs include the attorney disciplinary system, administration of justice, program development, and communications. The charts below show the allocations of membership fees to the general and administrative costs of mandatory programs supported by the fees.

<b>GENERAL FUND 2001 Actual Expenditures (Dollars in Thousands)</b>		
<b>Program</b>	<b>Amount</b>	<b>Percentage</b>
Discipline	\$26,302	79.27%
Administration of Justice	670	2.01%
Governance	1,871	5.63%
Administration of the Profession	1,406	4.23%
Program Development	761	2.29%
Communications & CBJ	2,168	6.57%
<b>TOTAL GENERAL FUND-PROGRAM EXPENSES</b>	<b>\$33,178</b>	<b>100%</b>

<b>DISCIPLINE 2001 Actual Expenditures (Dollars in Thousands)</b>		
<b>Sub-Program</b>	<b>Amount</b>	<b>Percentage</b>
Office of Chief Trial Counsel	\$19,955	75.86%
State Bar Court	4,556	17.32%
Fee Arbitration Program	371	1.41%
Professional Competence	1,420	5.14%
<b>TOTAL DISCIPLINE-SUB PROGRAM</b>	<b>\$26,302</b>	<b>100.00%</b>

## **LEGISLATIVE DEVELOPMENTS**

### **SB 479-Approved by the Governor on July 30, 2001**

This act amends Section 6140.9 of, and adds Article 15 (commencing with Section 6230) to Chapter 4 of Division 3 of, the Business and Professions Code, relating to attorneys.

This bill would require the Board to establish and administer an Attorney Diversion and Assistance Program. That program would be required to provide services for the treatment and recovery of attorneys due to the abuse of drugs or alcohol or mental illness. The bill would authorize the board to charge an annual fee of \$10 to each active member of the State Bar to cover the costs of the program.

### **SB 1194- Approved by the Governor on September 18, 2001**

This act amends Sections 22443.1 and 22447 of, and adds Sections 6126.5 and 22443.3 to, the Business and Professions Code, relating to legal services.

This bill would allow a person who obtained services provided in violation of [specified] prohibitions, or who purchased goods, services, or real or personal property in connection with services provided in violation of these prohibitions, to be awarded relief, including damages in the amount that he or she suffered loss and equitable relief, from an individual practicing law without an active State Bar membership or an individual who sold the goods, services, or property, in an enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney acting as a public prosecutor. The bill would also require the court to award reasonable attorney's fees and costs and authorize the court to award exemplary damages to the prosecuting attorney.

### **SB 352- Approved by the Governor on June 27, 2001**

This act amends Sections 6068, 6092, 6140, and 6140.55 of, and repeals Sections 6032, 6033, 6140.8, 6140.10, and 6140.15 of the Business and Professions Code, and repeals Chapter 868 of the Statutes of 1994, relating to attorneys.

This bill would extend the State Bar's authority to charge the membership fee to active members to December 31, 2003, and would decrease the maximum amount of the fee to \$310. The bill would also decrease the maximum allowable increase in membership fees for the Client Security Fund to \$35 per active member per year. The bill would remove the provision on an attorney's duty to abstain from having an offensive personality. The bill would also delete provisions relating to certain past obligations of the State Bar. The bill would become operative contingent upon the enactment of SB 479, as specified.

**AB 913 - Approved by the Governor on October 13, 2001**

This act adds Article 4.7 (commencing with Section 6072) to Chapter 4 of Division 3 of the Business and Professions Code, relating to attorneys.

This bill would require a contract with the state for legal services that exceeds \$50,000 to certify that the contracting law firm agrees to make a good faith effort to provide a specified minimum number of hours of **pro bono** legal services, as defined during each year of the contract. Pursuant to the bill, failure to make a good faith effort, as determined by considering specified factors, could constitute cause for nonrenewal of a contract and be taken into account in the awarding of future contracts. The bill would provide that these requirements do not apply to specified contracts. These provisions would become operative on January 1, 2003.

**AB 1083 - Approved by the Governor on September 18, 2001**

This act amends Sections 6450 and 6451 of the Business and Professions Code, relating to paralegals.

This bill would require that a person hold himself or herself out to be a paralegal in order to be considered a paralegal and that, among other things, the person be qualified by education, training, or work experience to be a paralegal.

**SB 1191 - Approved by the Governor on October 21, 2001**

This act amends Sections 4425, 6086.15, 6094.5, 7011.8 and 7017 of, and repeals Sections 1616.1 and 12029 of the Business and Professions Code (as well as other statutory provisions).

Existing law requires or requests various state and local agencies to prepare and submit reports to the Governor, the Legislature, or other state entities.

This bill would revise or delete certain reporting requirements for state and local agencies, and delete obsolete references.

## **GLOSSARY**

### **Admonition**

A written non-disciplinary reprimand issued by the Office of the Chief Trial Counsel or the State Bar Court pursuant to Rule 264, Rules of Procedure of the State Bar of California.

### **Agreement in Lieu of Discipline**

An agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution, pursuant to Business and Professionals Code sections 6068(l) and 6092.5(i).

### **Backlogged complaints**

Complaints that have been pending in investigation longer than six full months from the date of receipt (12 months for complex cases) without dismissal, admonition of the member involved or the forward of a completed investigation for prosecution.

### **Client Trust Accounting School**

A four-hour program designed to provide practical information to attorneys on the proper maintenance and handling of client trust accounts.

### **Complaint**

A communication which is found to warrant an investigation of alleged misconduct of a member which, if the allegations are proven, may result in discipline of the member.

### **Complaint - held**

A complaint for which a status of the case has been completed, reviewed and approved and which is being held pending receipt of remaining Statements of the Case [see below] on the same member.

### **Complaint - in abeyance**

A complaint temporarily not being worked on for a specific reason, such as pending acceptance of an attorney's resignation by the Supreme Court.

### **Complaint - open**

A complaint being worked on.

### **Conviction referral**

A formal disciplinary proceeding following an attorney's criminal conviction commenced by a referral order from the State Bar Court Review Department directing the Hearing Department to hold a hearing, file a decision and recommend the discipline to be imposed, if any, or take other action on the issue or issues stated in the order.

### **Disbarment**

A disciplinary action that prohibits an attorney from practicing law in the state. The attorney's name is stricken from the Roll of California Attorneys.

### **Dismissal**

A proceeding closed by the Office of the Chief Trial Counsel or the State Bar Court for a specific reason, such as no merit or insufficient evidence.

### **Ethics School**

An eight-hour program that focuses upon general principles of professional responsibility and law practice management and is designed to educate attorneys in methods they can utilize to avoid complaints being made to the State Bar.

### **Finality Rules**

California Supreme Court Rules that empower the State Bar Court to handle a number of matters - including placing convicted attorneys on interim suspension in appropriate instances - that formerly were Supreme Court responsibilities. The Rules also provide that, when a member does not request Supreme Court review after pursuing a State Bar Court appeal, the State Bar Court's recommendations are adopted by the Supreme Court as its final order unless the high court decides on its own to review the case.

### **Inquiry**

A communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine if any action is warranted by the State Bar.

### **Involuntary Inactive Enrollment**

The transfer of an attorney to inactive status (1) after the attorney is judged to present a substantial threat of harm to clients or the public, or (2) after the attorney is judged to be unable to practice without danger to clients or the public because of a disability, or (3) for other reasons allowed by state law. An attorney on inactive status cannot practice law.

### **Notice of Disciplinary Charges**

A document filed in State Bar Court containing formal charges against a member.

### **Private Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court which is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. The reproval may be imposed with duties or conditions.

### **Pro tempore hearing judges**

A panel of specially trained lawyers or retired judges who serve as judges of the State Bar Court Hearing Department on a temporary, as-needed basis.

### **Probation**

A status whereby an attorney retains the legal ability to practice law subject to terms, conditions and duties for a specified period of time.

### **Public Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court which is a matter of public record. The reproval may be imposed with duties or conditions.



**Reinstatement**

Readmission by the Supreme Court to the practice of law and to membership in the State Bar of a former member who resigned or was disbarred. The former member must demonstrate rehabilitation and present moral qualifications as well as ability and learning in the law.

**Request for Further Proceedings**

A request from a complaining witness after being advised that the complaint has been dismissed or the member has been admonished.

**Resignation Tendered with Charges Pending**

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member against whom disciplinary charges are pending. Supreme Court acceptance of a resignation is required to make it effective, but as soon as a member submits a resignation in proper form, the member is transferred to inactive status and cannot practice law.

**Resource Letter**

A Resource Letter may be issued where there is a probable violation or a potential for a future violation of the Rules of Professional Conduct and/or the State Bar Act which is minimal in nature and would not lead to discipline of the member. The member is referred to various resources which may assist the member in avoiding future problems and/or the filing of complaints against him or her in the future.

**Statement of the Case**

An investigator's written report of information and evidence submitted to an Office of the Chief Trial Counsel attorney for further action.

**Stipulation**

A agreement between the member and the Office of the Chief Trial Counsel regarding a statement of facts, conclusions and/or disposition filed by the Office of the Chief Trial Counsel in the State Bar Court.

**Suspension**

A disciplinary action that prohibits an attorney from practicing law or from holding himself or herself out as a lawyer for a period of time set by the California Supreme Court.

**Termination**

A proceeding closed due to an external cause, such as death of the member, disbarment in a separate matter or resignation with charges pending.

**Warning Letter**

A Warning Letter may be issued when there is a probable violation of the State Bar Act or the Rules of Professional Conduct which is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds.